



Water Pollution Control  
Enforcement & Compliance

Construction Storm Water

# Rights and Responsibilities

- The people of Tennessee have a right to unpolluted waters.
- The government of Tennessee has the responsibility to take all prudent steps to secure, protect, and preserve this right.



# Our Mission & Commitment

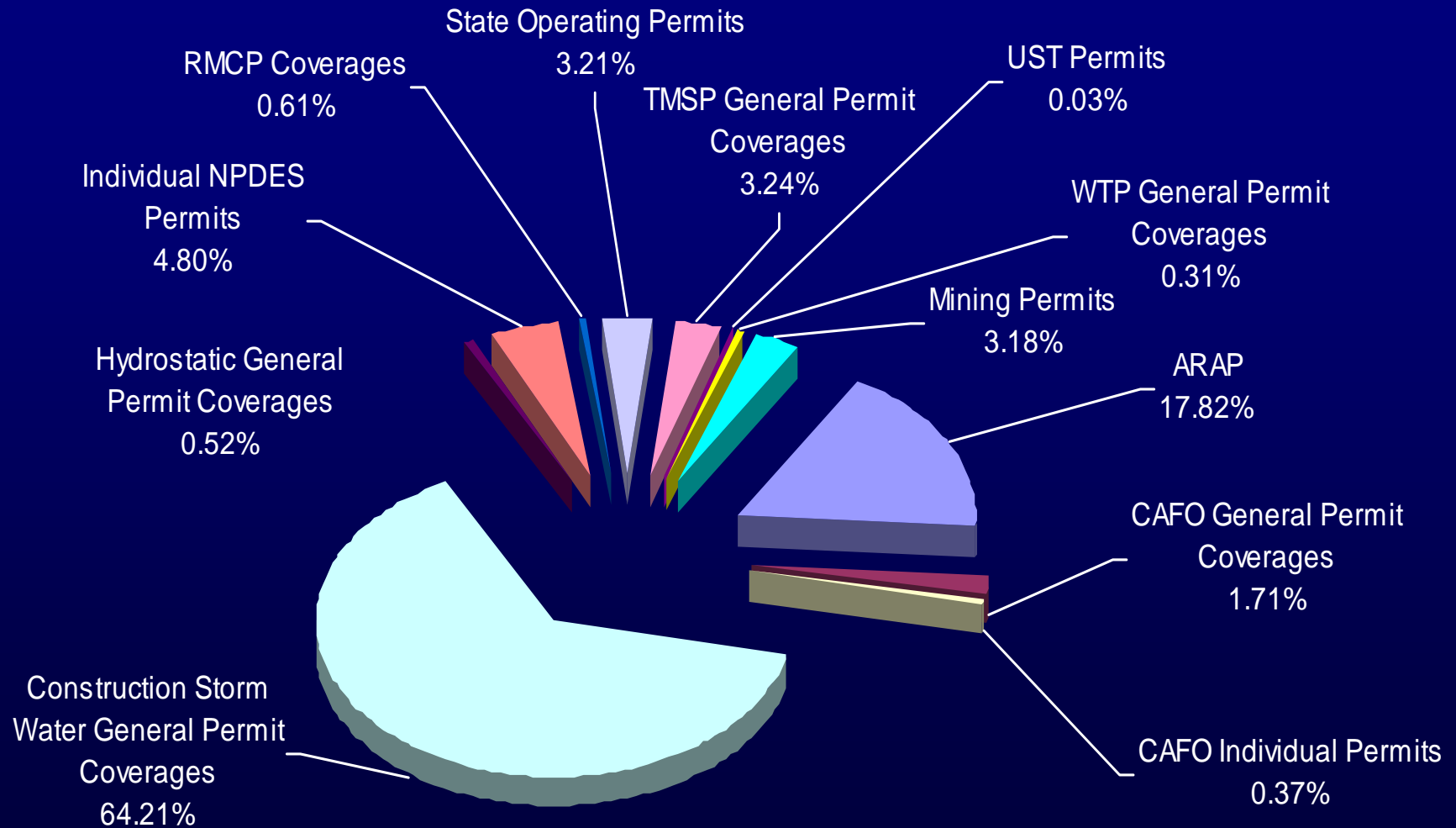
- The Division of Water Pollution Control (WPC) is charged with the implementation of the *Tennessee Water Quality Control Act* (the “Act”).
- Thus, WPC regulates any activity resulting in discharge of materials or wastewater into waters of the State.
- WPC must make every effort to reduce existing pollution, reclaim polluted water and plan for the future use of this State’s water resources.

# What does WPC permit?

- In 2005, WPC personnel issued a total of 3,272 permits.
- We currently have more than 12,000 active permits and permit coverages.

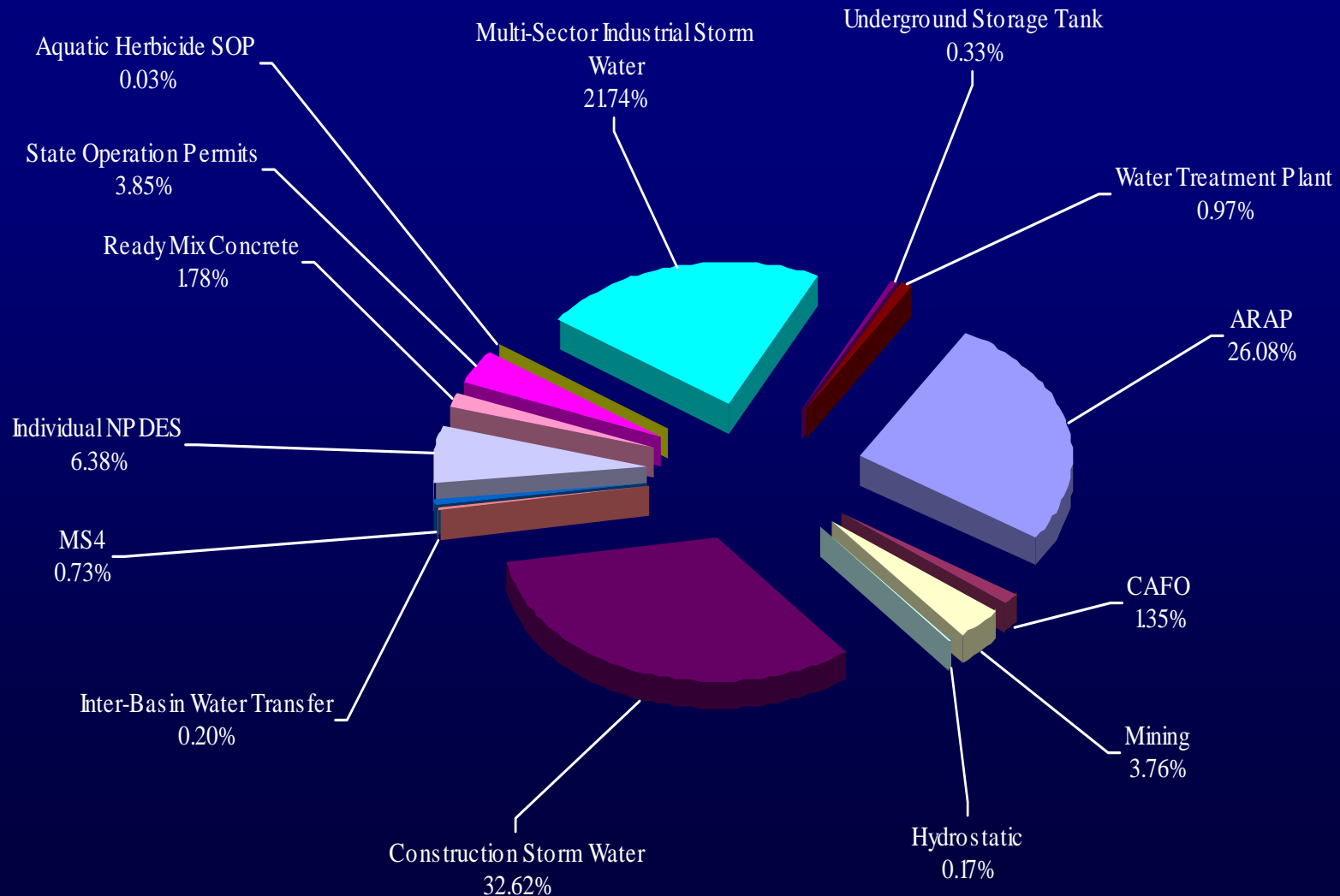
# Permits Issued in 2005

## WPC Permits



# Active Permits

## WPC Permits



# TN Construction General Permit (CGP)

- Tennessee's first general construction discharge permit went into effect in 1992.
- The permit was reviewed, modified, and reissued July 1, 2000.
- The current CGP was issued June 16, 2005.
- Valid for 5 years – expires May 30, 2010.



# Who must have coverage?

- Construction activities including clearing, grading and excavation for any soil disturbance  $> 1$  acre of total land area.
- Disturbances of  $< 1$  acre have to obtain coverage if part of a larger common plan of development or sale.





When being nice doesn't work,  
there is always enforcement.



# Authority



- The Tennessee Water Quality Control Act allows the Commissioner to pursue both civil administrative actions and criminal (misdemeanor and felony) actions against those who violate the Act.

# Enforcement Management Strategy

- Mandates of the Act, and obligations to the citizens of Tennessee, require WPC to seek the most efficient and effective means of assuring water quality.
- Our Enforcement Management Strategy (EMS) is one mechanism to achieve this goal.
- The EMS provides for firm, fair, consistent and timely enforcement of the law and the regulations for activities affecting State waters.



# Enforcement Tools

- Within the context of enforcement discretion, various enforcement options are available to WPC to address pollution, require corrective actions and function as a deterrent to future non-compliance.
  - Notice of Violation (NOV)
  - Administrative Orders
  - Criminal Charges



# Notice of Violation (NOV)

- An NOV is correspondence sent by WPC to a regulated person or entity notifying them that a violation has occurred.
- For construction storm water violations, the NOV would likely be prepared by WPC staff in the Environmental Field Office, as the result of violations discovered during a site inspection.

# NOV Facts

- An NOV will not assess a civil penalty.
- An NOV will likely require corrective actions by the recipient.
- Compliance with requirements in the NOV will be a factor considered when deciding if an administrative order is needed.
- An NOV is not a prerequisite for an administrative order or criminal charges.

# Administrative Orders

- Commissioner's Order
- Director's Order
- Agreed Order
- Consent Order
- Board Order





# Commissioner's Order

- This is a conventional administrative order that assesses damages and civil penalties.
- This order would likely contain corrective action requirements with a schedule imposed.
- Non-compliance with an administrative order would likely result in an action in Chancery Court.



# Director's Order

- The Act allows the Commissioner to delegate to the Director of the Division of Water Pollution Control any of the powers, duties, and responsibilities of the Commissioner under the Act.
- The Commissioner has delegated the authority to order corrective actions and assess up to \$25,000 in civil penalties .

# Expedited Director's Order

- WPC has developed an expedited Director's Order for storm water violations at construction sites, under the authority delegated to the Director by the Commissioner.
- The purpose is to have an immediate response to construction storm water violations.
- The maximum penalty assessed in this expedited format is \$11,500.
- If there is a condition of pollution then the enforcement action would be a conventional order, not an expedited order.

# Appeals

- The Act, allows a Respondent to appeal an administrative order. To have the order reviewed, the Respondent must file a written petition requesting a hearing before the Water Quality Control Board.
- The Respondent must file the written petition within 30 days of receiving the order.

# Agreed Order

- If a Respondent files an appeal, the case will be referred to the Office of General Counsel (OGC).
- Through counsel, WPC will attempt to settle the dispute and arrive at an Agreed Order.
- An Agreed Order must be approved by the Water Quality Control Board (WQCB).

# Consent Order

- A Consent Order is rare in Tennessee, but it follows the U.S. EPA model for an administrative enforcement order.
- Both parties discuss the violations, penalties, and requirements and reach a compromise agreement prior to the issuance of the order.

# Board Order

- Board Orders are the result of an appeal that becomes a contested case before the WQCB.
- WPC and the Respondent put forth evidence and the WQCB will rule and establish the requirements.

# Show me the money!



T.C.A. 69-3-115 (a) (1) states in-part (paraphrased) :

Any person who violates the Act is subject to a civil penalty of up to ten thousand dollars (\$10,000) per day for each day during which the violation or omission continues or occurs.

## Gut Check ...WPC will pull the trigger!

- We currently have over 400 active water pollution civil administrative actions.
- In 2005, the department issued a total of 150 formal enforcement actions related to water pollution control, assessing \$3,745,557 (i.e., well over \$3M) in civil penalties.
- Most contain corrective action requirements.



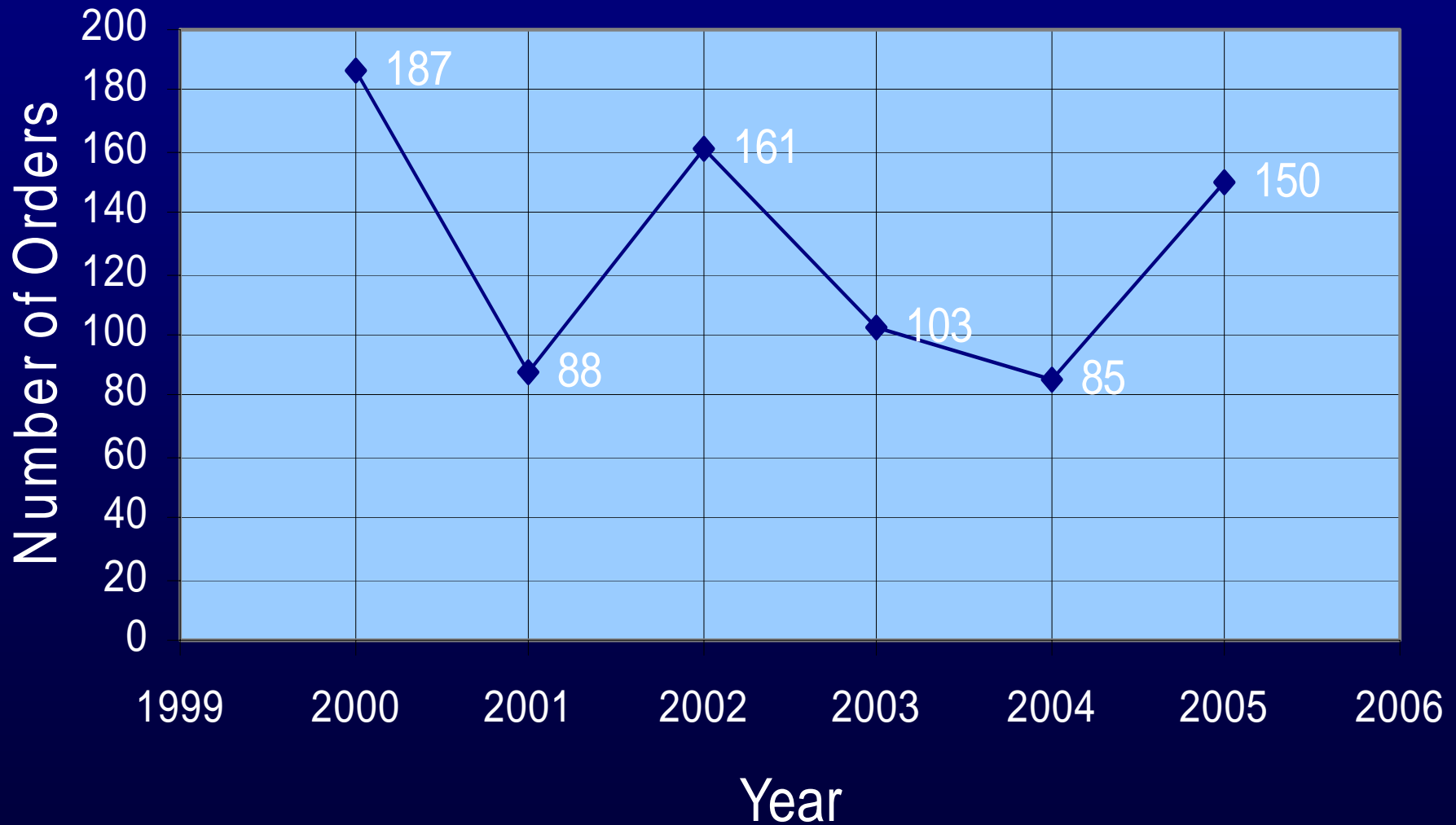


# More Enforcement Numbers

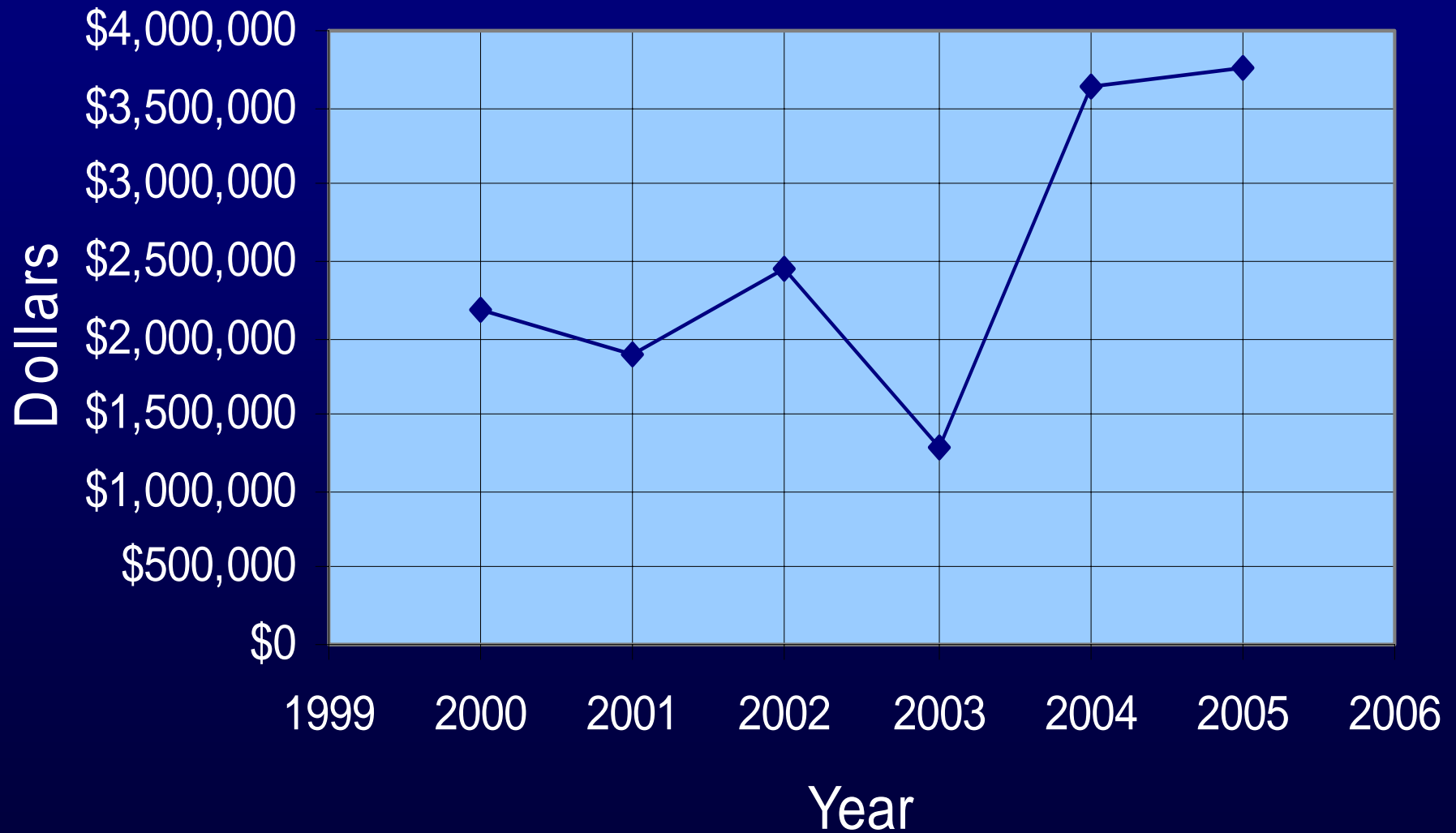
- We have 45 orders with corrective action requirements against municipalities (40% of major municipal STPs under order).
- From 2000 through 2005, our orders contained over \$15 million in civil penalties.



# WPC Orders Issued By Year



# WPC Penalties Issued By Year



# Hard time!



- In 2005, the department initiated more than 30 criminal cases for water pollution.
- The department routinely partners with the U.S. EPA Criminal Investigation Division (EPA-CID), in addition to the U.S. and State District Attorneys in prosecuting environmental crimes.

# Storm Water Orders



- WPC implemented the expedited Director's Orders process in May 2006.
- WPC is currently issuing expedited Director's Orders for construction storm water at a rate of approximately 2 orders per day and the rate is increasing.
- From January 2005 to May 19, 2006, WPC issued 47 orders for construction storm water violations.
- These orders assessed civil penalties in excess of \$1.2 million.

# Any Questions?

